

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :22.04.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No. 11354 of 2019

and

W.M.P.No.11682 of 2019

P.Asaithambi

..Petitioner

- Vs. -

1. The District Collector,
1st floor, Main Building,
District Collectorate,
Tiruchengode Road,
Namakkal - 63700.

2. The Commissioner,
Mallasamudram Union,
Namakkal District - 637 503.

3. Block Development Officer (BDO),
Mallasamudram Union,
Namakkal District - 637 503.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the second respondent relating to the order in Na Ka No.3684/2017/A1 dated 22/03/2019 to quash the same and to issue consequential directions to the respondents to grant the Travelling Allowance fixed prior to the impugned order and to refund the recovered amount if any to the petitioner.

For Petitioner : Mr.Ravi.M

For Respondents : Mr.A.N.Thambidurai,
Special Government Pleader

ORDER

The learned counsel for the writ petitioner states that the writ petitioner is working as Watch man and the impugned order of recovery has been issued stating that the excess allowances has been paid to the writ petitioner.

2. It is pertinent to note that the writ petitioner is a class - 4 employee and the allowances were granted by establishment of the respondents. Even in case of erroneous payment, the same cannot be recovered from class - 4 employees, in view of the legal principles settled by the Supreme Court of India in the case of State of Punjab and Others vs. Rafiq Masih (White Washer) and others reported in 2015 (4) SCC 334, and the Apex Court issued the following guidelines in respect of the recovery and the relevant portion is extracted hereunder:

"18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D Service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

3. This apart, the respondents are unable to establish that show-cause notice was issued before issuing the impugned order of recovery and in view of the legal principles settled by the Supreme Court of India excess payment cannot be recovered from the Class - 4 employees. The respondents are at liberty to pay the correct and admissible salary and allowance in accordance with the Rules. However, the excess payment made cannot be recovered and the impugned order issued by the second respondent in proceedings Na Ka No.3684/2017/A1 dated 22/03/2019 is quashed.

4. The respondents are directed to pay the admissible salary and allowances as per the recruitment rules. The excess payment, if any, reimbursed already is directed to repay back to the writ

petitioner within a period of 12 weeks from the date of receipt of a copy of this order.

5. Accordingly, the present writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (AD -IV)

//True Copy//

Sub Assistant Registrar

Pns

To

1. The District Collector,
1st floor, Main Building,
District Collectorate,
Tiruchengode Road,
Namakkal - 63700.
 2. The Commissioner,
Mallasamudram Union,
Namakkal District - 637 503.
 3. Block Development Officer (BDO),
Mallasamudram Union,
Namakkal District - 637 503.
- +1 cc to Mr.M.Ravi, Advocate, S.R.No.38678

W.P.No. 11354 of 2019
and
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SPD(CO)
SSM(20/05/2019).

सत्यमेव जयते

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